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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/299,684	04/26/1999	NINA T. BHATTI	10982229-1	3580

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EXAMINER

WILLETT, STEPHAN F

ART UNIT

PAPER NUMBER

2141

DATE MAILED: 12/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/299,684

Applicant(s)

BHATTI ET AL.

Examiner

Stephan F Willett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103 and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mogul et al. with Patent Number 6,243,761 in view of Colby et al. with Patent Number 6,449,647.

4. Regarding claim(s) 1, 9, Mogul teaches a computer network that varies the quality of data transmitted. Mogul teaches a content server that stores files for external access, col. 5, lines 5-8, storing or creating data files that are less resource intensive, col. 5, lines 46-57; col. 2, lines 19-23 that are stored in a full content and adapted content form, col. 5, lines 58-67; col. 2, lines 4-8. Mogul teaches an adaptive load control system to pass requests to the server, col. 5, lines 46-59, modifying an access request, col. 5, lines 40-57, col. 7, lines 26-28 and/or modifying an access

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request address, col. 2, lines 4-18 to instead obtain an adapted content by legacy addresses or dynamically as “by automatically varying the layout of ‘content’ in response to recent information about network conditions”, col. 9, lines 57-58, and when the server is over loaded as “the effective bandwidth can also depend on server loads”, col. 9, lines 52-53, “download time”, col. 9, line 63 and “monitoring includes measuring the server load of the server”, col. 10, lines 53-54. Mogul teaches monitoring the response time of the server, col. 10, lines 49-50. Mogul teaches the invention in the above claim(s) except for explicitly teaching multiple virtual servers whose loads do not effect one another. In that Mogul operates to generate service requests with servers, the artisan would have looked to the load balancing arts for details of implementing server dependencies. In that art, Colby, a related network balancer, teaches “load metrics indicating the load on the server”, col. 6, line 67 in order to provide optimized loading. Colby teaches “which servers, if any”, col. 7, line 27 can service the request as “virtual) web host [server]”, col. 14, line 63. Colby specifically teaches replicated servers, col. 7, lines 33-36 and that a request “may not be possible”. Colby teaches the IPP “periodically sends local server load”, col. 7, line 18 information and much other information for “one of the candidate servers”, col. 22, lines 1-15 . Nothing in Colby teaches that the servers’ loads are interdependent or that a decision to load a particular server or deny a request based on server loads will effect a second server, directly or indirectly. For example, specifically second servers are not effected by load decisions due to more than one available server has been generated based on a load decision, as indicated by “list of such candidate servers”, col. 7, line 28 and/or by replication. Further, Colby suggests that “an ordered list of candidate servers”, col. 7, line 60 will result from implementing his load balancing and candidate servers on this list do not effect one another. The

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motivation to incorporate a multiple independent servers insures that QOS is assured. Thus, it would have been obvious to one of ordinary skill in the art to incorporate the independent servers as taught in Colby into the content adjuster described in the Mogul patent because Mogul operates with loads and Colby suggests that optimization can be obtained with multiple independent servers. Therefore, by the above rational, the above claim(s) are rejected.

5. Regarding claims 2, 10, Mogul teaches instead transmitting full content when the server is not overloaded, col. 5, lines 58-61, col. 6, lines 33, 42.

1. Regarding claims 3, 11, 15, Mogul teaches monitoring network loads internal and external to the server, col. 6, lines 30-49 and instead transmitting full content when the server is not overloaded, col. 5, lines 62-64, col. 6, lines 33, 42.

2. Regarding claims 6, Mogul teaches instead transmitting full content when the server is not overloaded, col. 5, lines 58-61, col. 6, lines 33, 42.

3. Regarding claims 4, Mogul teaches adapting the content based on the load, col. 7, lines 34-37 dynamically, or providing an address to the dynamically generated content, col. 2, lines 4-18 .

4. Regarding claims 5, Mogul teaches a predetermined desired load value of the server to compare to determine if the server is overloaded as based on the load limits the download time can be adjusted since load values are directly related to download time, col. 7, lines 48-52 and/or “threshold”, col. 6, line 37.

5. Regarding claims 7, 12-13, Mogul teaches modifying a URL access request for content, col. 2, lines 10-19 and col. 9, line 41.

6. Regarding claims 8, Mogul teaches the server includes a service directory or index or

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library or database that direct the access request to the corresponding “annotated page” or format, col. 9, lines 38-39.

7. Regarding claims 14, Mogul teaches determining an estimated utilization of the server, col. 6, lines 51-54 by estimating an amount of time the server spends serving external requests col. 6, lines 54-56 such as “download times”, col. 6, line 33, col. 7, lines 48-52 and col. 9, lines 62-63 .

Response to Amendment

1. Based on the new grounds for rejection the applicant’s arguments are moot. The broad claim language used is interpreted on its face and based on this interpretation the claims have been rejected.
2. The limited structure claimed, without more functional language, reads on the references provided. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
4. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (571) 272-3890. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is (571) 272-0044.

7. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

sfw

December 27, 2004

JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

